POST-AWARD ADMINISTRATION PHASE

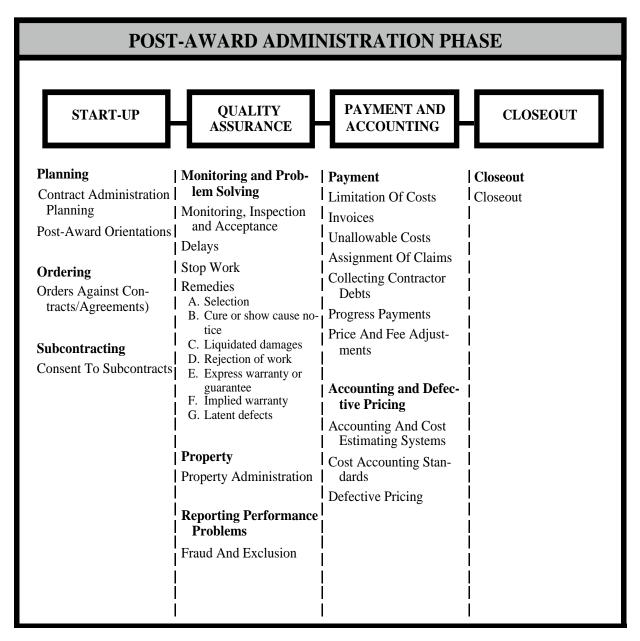


Exhibit 8-1. Post-Award Administration Phase of FAP Flowchart.

Learning Objectives

Learning objectives for this chapter appear before each section or subsection they apply to; they are highlighted with gray shading. After completing this chapter, you will be expected to know all the learning objectives for this chapter.

Exhibit 8-2. Learning Objectives.

CHAPTER INTRODUCTION

The Third Phase

Post-Award Administration is the third phase of the federal acquisition process. Just having a contract, however, does not satisfy your agency's need. The need will be satisfied only when the contractor delivers the required supplies or services on a timely basis and at the agreed-upon price. This is the fundamental objective of **Contract Administration** (**CA**) and includes the following basic functions:

- 1. **Start-Up.** The Government and contractor, respectively, plan and initiate performance of the work. With respect to the Government, this involves such steps as delegating responsibility for satisfying the Government's obligations under the contract, orienting the contractor, placing orders against the contract, and consenting to subcontracts.
- 2. **Quality Assurance.** The Government and contractor, respectively, assure that work satisfies the contract's requirements. On the part of the Government, this involves such steps as inspecting and accepting contract deliverables as they are received, determining the excusability of delays, and invoking formal remedies to bring contract performance back into line.
- 3. **Payment and Accounting.** The Government determines the amount due the contractor and, as provided in the contract, issues payment.
- 4. **Closeout.** When all deliverables have been accepted, the Government verifies that the contract is physically complete and that all applicable terms and conditions have in fact been satisfied.

8.1 START-UP

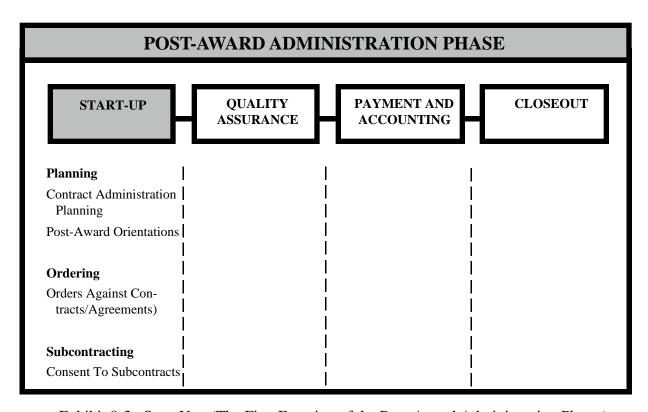


Exhibit 8-3. Start-Up. (The First Function of the Post-Award Administration Phase.)

8.1.1 Planning

After a contract is awarded, the CO redirects the Governments' efforts and resources from preaward activities to post-award activities. The first steps are to (1) plan administration and (2) orient the contractor.

8.1.1.1 Contract Administration Planning

- Describe typical elements of a contract administration plan.
- Describe the delegation of authority to CORs and COTRs.
- List duties typically delegated to ACOs.

Although the FAR does not require the CO to prepare a formal contract administration plan, the CO is responsible for ensuring that the parties have complied with all terms and conditions of the contract. At minimum, contracting officers should therefore track receipt of the deliverable (or performance of the service), acceptance, and payment under the contract. This is true, for example, when contracting for the furnishing and delivery of standard commercial items.

Formal Contract Administration Plans

A formal contract administration plan is essential when the contract involves large dollar amounts or complex technical requirements. Those contracts place many duties and responsibilities on both parties. The contract administration plan should provide for:

- An appropriate level of surveillance or monitoring of contractor performance
- Timely and proper performance of the Government's responsibilities

TYPICAL ELEMENTS OF CONTRACT ADMINISTRATION PLANS

- Title of the contract, related identifiers, and criticality (per FAR 42.1105).
- Identity of the contractor and key contractor personnel.
- Location of files on the contract and the contractor.
- Brief description of the work to be performed (from § B-D of the UCF).
- Place of performance and/or delivery points (from §F of the UCF).
- Reporting requirements (from §H and I of the UCF).
- The contractor's milestones (from §F-I of the UCF) for such critical events as:
 - First article testing and reporting.
 - Performance or delivery.
 - Submission of progress reports.
 - Submission of invoices and other data related to payment.
- Tasks to be performed by Government personnel and milestones for each such task, with respect to such functions as:
 - Monitoring the contractor's quality assurance program.
 - Furnishing Government property to the contractor and monitoring its use.
 - Reviewing and responding to contractor reports.
 - Receiving, inspecting, and accepting the work.
 - Certifying costs incurred or physical progress for payment purposes.
 - Monitoring compliance with the small business subcontracting plan.
- Identity of the CO's Representatives (CORs) and Technical Representatives (COTRs).
- Tasks delegated to each COR and COTR (including any limits on their authority).

Exhibit 8-4. Important Elements of a Contract Administration Plan.

Delegating Authority to CORs and COTRs

CO's usually delegate authority to CORs and COTRs for such functions as inspection and acceptance. The delegations are generally made in writing and specify any limits on the delegated authority. In addition, CO's ensure that CORs and COTRs are aware of the doctrine of constructive changes and the potential consequences of exceeding the limits on their authority.

Delegating Authority to ACOs

The procuring contract activity may retain a contract or assign it to another contracting office for administration:

- 1. When a contractor's facility is located at a great distance from the buying office, CA functions may be assigned to another contracting office in the contractor's locality. For example, if a CO in Arlington, Virginia awards a contract to a company in Chicago, the CO might ask a contracting activity in Chicago to administer the contract.
- 2. The contract may be delegated to a Contract Administration Office which specializes in contract administration tasks.

Contract Administration offices typically employ Administrative Contracting Officers (ACOs), who are authorized by the Procuring Contracting Officer (PCO) to perform selected contract administration functions. However, even when the contract is assigned to another office for administration, the PCO often remains involved in such postaward functions as modifying the terms and conditions of the contract.

The Government's major CA organization is the **Defense Contract Management Command (DCMC)** within the Defense Logistics Agency. DCMC supports Defense COs but also provides CA services to civilian agencies on a reimbursable basis.

ACO Functions

FAR 42.3

The FAR lists more than sixty functions that are generally delegated to ACOs. Some of those functions are listed on Exhibit 8-5. When the contract is not assigned to an ACO, many of these functions are performed by the procuring office.

EXAMPLES OF CONTRACT ADMINISTRATION FUNCTIONS

- Conduct post-award orientation conferences.
- Review and approve or disapprove contractor's request for payments.
- Administer security requirements, if any.
- Perform property administration.
- Perform technical surveillance.
- Ensure compliance with quality assurance requirements.
- Review, approve or disapprove, and survey the contractor's purchasing system.
- Monitor small business subcontracting plans.
- Monitor overall performance to help ensure timely deliveries.

Exhibit 8-5. Examples of Contract Administration Functions.

8.1.1.2 Post-Award Orientation

- State the situations calling for a post-award orientation.
- State the major purposes of the orientation.

Need for Post-Award Orientations

FAR 42.5

In many cases, contracts are awarded and contractor performance begins routinely without any post-award orientation as such. In other cases, a post-award orientation may take the form of a phone call or letter. Post-award orientation conferences are normally held for complex contracts. Conferences are encouraged when contracting with small business, small/disadvantaged business, and woman-owned small business concerns.

Purpose

CO's use post-award orientation conferences to:

- Ensure that both parties have a clear and mutual understanding of all contract requirements (especially when dealing with contractors who are inexperienced in furnishing deliverables to the Government),
- Identify and resolve potential problems, and
- Introduce the Government's representatives, furnish notices and other data to the contractor, and otherwise set the stage for a good working relationship under the contract.

Often, the persons who will perform or administer the work did not participate in events leading up to contract award. An orientation conference can help them understand the terms and conditions of the contract. On the other hand, post-award orientation conferences should not be conducted for the purpose of modifying the contract.

8.1.2 Orders Against Contracts/Agreements

• Describe the role of the CO in processing orders against Basic Ordering Agreements (BOAs) and indefinite-delivery contracts.

FAR 16.5 & 16.7

Indefinite-delivery contracts and Basic Ordering Agreements (BOAs) often serve as a basis for ordering supplies or services from contractors.

Indefinite-Delivery Contracts

An indefinite-delivery contract may be used when the exact time, quantity, and/or place of delivery of specified supplies or services is not known at the time of contract award. For example, GSA uses indefinite delivery contracts to establish sources for common supply items.

During the period of the contract, orders may be placed for a specific quantity of the items where needed. Each order generally specifies the time, delivery point, and quantity for a partial shipment under the contract and, as such, merely fulfills the contract's terms and conditions.

Basic Ordering Agreements

Basic Ordering Agreements are used to expedite contracting for uncertain requirements. For example, when awarding a contract for maintenance and overhaul of ships, the CO may also establish a BOA with the contractor for spare parts.

The BOA provides for the placement of orders for a category of supplies or services, should they be needed as the work progresses. In the case of BOAs, each order constitutes a separate and independent contract. The CO's responsibilities in placing orders against BOAs and indefinite-delivery contracts include the following:

- Ensuring that the appropriate type and amount of funds are available.
- Determining whether an existing Basic Ordering Agreement or indefinite-delivery contract may be used to obtain supplies or services. Note that:
 - If Basic Ordering Agreements are used, the CO must comply with FAR competition and publicizing requirements prior to placing each order.
 - Orders placed under Indefinite-Delivery Contracts need not be publicized and competed if these requirements were met when the contract was placed.

Multiple Award Task & Delivery Order Contracts

In FAR Part 16, the FAR defines a task order contract as "a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract." In contrast, the FAR defines a delivery order contract as a contract "for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract."

The FAR establishes a general preference for multiple awards when using indefinite-quantity contracts. Appendix 1 covers the process for establishing multiple award task order contracts and the process for placing orders against such contracts. §16.501-1

8.1.3 Subcontracting

8.3.1.1 Consent to Subcontractors

- State conditions under which the Government has the right to consent to subcontracting.
- State the factors to consider in making the consent decision.
- State how consent may be waived.

The Right of Consent

In many contracts, much of the work is actually performed by subcontractors. Thus, for prime contractors, the "start-up" phase often includes the awarding of subcontracts. Contractors are generally given a great deal of flexibility in determining the extent to which they will utilize

subcontractors. However, some contracts include a clause that requires the Government's prior consent before the contractor can award a subcontract. Such clauses do not necessarily require prior consent to all subcontracts that the prime contractor plans to award. Rather, the requirement for consent is triggered by such factors as the:

- The type of contract that has been established with the prime contractor (e.g., for Firm Fixed Price contracts, FAR clause 52.244-1, Subcontracts (Fixed-Price Contracts), applies only to subcontracts resulting from unpriced modifications).
- Dollar value of the subcontract.
- Type of subcontract (fixed-price/cost reimbursement).
- Type of work to be performed by the subcontractors.

Factors in Consenting

When exercising consent authority, the CO will evaluate proposed subcontracts to ensure, among other things, that:

- The proposed subcontract is proper (e.g., the CO might ask: Is the proposed subcontractor on the "List of Parties Excluded From Government Procurement Programs"? Does the proposed subcontract establish a prohibited cost plus percentage of cost arrangement?).
- Proposed prices are reasonable (where possible, based on adequate price competition).
- The subcontract is placed with due regard for:
 - Subcontractor responsibility
 - Small business participation
 - Competition requirements
 - Other considerations specified in the FAR

Waiving Consent Requirements

FAR 44.2

Sometimes, a Government activity will conduct a Contractor Purchasing System Review (CPSR). If the contractor's purchasing system meets CPSR standards, the CO may rely on that system and "waive" the need for the contractor to obtain Government consent before placing subcontracts.

8.2 QUALITY ASSURANCE

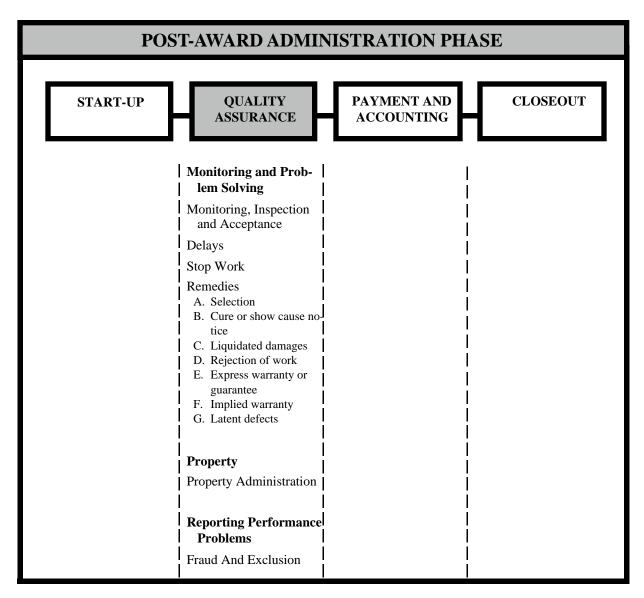


Exhibit 8-6. Quality Assurance. (The Second Function of the Post-Award Administration Phase.)

8.2.1 Monitoring and Problem Solving

8.2.1.1 Monitoring, Inspection, and Acceptance

- State the CO's major roles/responsibilities in inspection/acceptance.
- State the four basic types of performance problems.

Why Monitor Performance

FAR 12.402 & Part 46

Fixed-price contracts bind contractors to deliver the specified goods and/or services. However, even when the contractor is fundamentally responsible for the timely delivery of acceptable deliverables, the CO must at times protect the Government's interests through such means as:

- Monitoring contractor performance.
- Inspecting contractor products.
- Informing the contractor of any problems.
- Identifying and implementing contractual remedies.

In cost-reimbursement, time and materials, and labor hour contracts, the contractor is obligated only to make a good faith effort to perform the work of the contract within the ceiling price or limitation on costs established in the contract. In these contracts, surveillance of the contract is all the more important to ensure satisfactory performance.

Who Monitors Performance

Monitoring should therefore be consistent with the dollar value, type, and complexity of the contract. Who monitors a contract depends on the kind of contract.

- Under a fixed-price supply contract, the end user often inspects and accepts the deliverable as the CO's representative.
- Under a production contract, a quality assurance specialist often represents the CO, in terms of inspecting and accepting the work.
- In system contracting, a team or entire contract administration activity might be involved in monitoring, inspection, and acceptance.

The CO's Role

If a monitor identifies a problem that may have an adverse effect on the contract, the monitor should immediately notify the CO. The same is true if the monitor finds that Government action or failure to act is the problem (e.g., failure to provide adequate Government-furnished property, if required by the contract). Upon notice of a problem, the CO's role is to resolve the problem by taking one or more of the appropriate steps in Exhibit 8-8.

TYPES OF PERFORMANCE PROBLEMS

Schedule: Failure to deliver or make progress toward timely delivery.

Cost: The contractor is exceeding cost estimates on a cost-reimbursement

contract or is so over budget under a fixed price contract as to endanger both schedule and performance (or even its very survival).

Quality: The supplies or services in process or being delivered do not meet

contract requirements or are not expected to do so.

Compliance: The contractor is not complying with other terms and conditions of

the contract (e.g., with clauses on labor rates, clean air and water, subcontracting goals, maintaining a drug-free workplace, etc.).

Exhibit 8-7. Examples of Performance Problems.

If such problems surface, the CO or ACO is ultimately responsible for their resolution.

STEPS IN RESOLVING PERFORMANCE PROBLEMS

- Verify and document evidence of the problem.
- Determine the potential impact on cost, delivery, and other requirements.
- Determine whether the delay (if any) is excusable or whether the Government is otherwise at fault to any extent (see section 8.2.1.2).
- Where necessary, stop work-in-process while the problem is being resolved (see section 8.2.1.3).
- Seek an informal resolution of the problem.
- Where necessary, invoke any applicable contractual remedy (e.g., rejection of work, liquidated damages, invoking of a warranty, or issuance of a cure or show cause notice—see section 8.2.1.4).
- Modify the contract when and as necessary to resolve the problem (see section 9.1).
- As a last resort, terminate the contract (see section 9.2.1).
- Keep all interested parties informed of the contract's status and document the file.

Exhibit 8-8. Steps In Resolving Performance Problems.

The requiring activity and contracting personnel should always be alert to a contractor's poor performance so that appropriate action may be promptly initiated by the CO. The action may either prevent the need for termination or protect the rights of the Government if termination becomes necessary.

Inspector Livingston, I presume?

After the contractor begins work on the Livingston's new house, it is important for them to ensure that the work is being done according to the contract. The fifth question in the "Livingston's House Dilemma" vignette in Chapter 5 asks "How can we be sure the work is done according to the contract?" Just as the Government must protect its interests by monitoring contractor performance and inspecting contractor products, the Livingston's must do the same. Even though the Livingston's are working with a firm-fixed price contract, there is still a need to monitor the work as it progresses to ensure that the builder meets the specification requirements. Because the Livingstons' need assistance in monitoring the contract, they arranged for the architect to also provide monitoring services. In addition, the local county building inspectors will ensure that the construction is in accordance with the building code. Monitoring, inspection, and acceptance, are very important during the administration of any contract.

8.2.1.2 Delays

FAR 52.212--4(f); 52.249-8 & 9

- State the major types of contract delays.
- State the CO's role in dealing with delays.

When a delay occurs in contract performance, it is due to one, or a combination, of the three causes listed in Exhibit 8-9, below.

CAUSES OF DELAY

- Contractor's negligence or fault.
- Government negligence or fault (e.g., failure to furnish Government property at the place and time specified in the contract).
- Factors beyond the control of either (e.g., acts of God, fire, floods, epidemics, quarantine restrictions, and—under some circumstances—strikes).

Exhibit 8-9. Causes of Delays.

The CO's Role

When one or both of the last two causes apply, the delay might be "excusable" in part or in whole. To the extent that the delay is "excusable," the contractor may be entitled to an extension of the delivery schedule without consideration to the Government. If the Government is at fault, the contractor may also be entitled to an equitable adjustment in the contract price. The CO is responsible for determining whether the delay is excusable, the extent to which it is excusable, the length of any time extension in the delivery or performance schedule, and any necessary equitable adjustment.

8.2.1.3 Stop Work

• State situations under which a stop work order is necessary.

• Describe the "stop work" procedure.

FAR 42.13

When Work May Be Stopped Some contracts include a clause (e.g., FAR clause 52.242-15) that gives the CO the right to stop a contractor's work, in whole or part, to protect the best interests of the Government. Work stoppages tend to be costly as a rule and should only be contemplated when the benefits outweigh the costs. Among other reasons, a stop work order might be necessary when:

- Considering the need for terminating the contract (although a stop work order may not be used in lieu of a termination notice).
- The Government cannot furnish property or services per the contract schedule.
- Quality assurance personnel request that a production line be stopped to allow recalibration of their tools.
- The Government needs time to consider a contractor proposal for substantially changing the way the product is made.
- The requiring activity is considering a contract modification that would substantially change the end product.

The Stop Work Procedure

In such situations as the above, it may be in the best interests of the Government to temporarily stop the work-in-process. The CO may unilaterally stop work for 90 days, or the work may be stopped for a longer period to which the contractor and the CO mutually agree. At the end of the stop work period, work resumes unless the CO:

- Extends the stop work period through a supplemental agreement,
- Cancels the stop work order, thus permitting work to resume prior to expiration of the stop work period, or
- Terminates the contract for either default or convenience.

The contractor must comply with the terms of the order and take reasonable steps to minimize costs associated with the work stoppage.

8.2.1.4 Remedies

FAR 12.4, 46.407, 46.7, 49.607, & 52.212-4(a), (o) & (m)

- State the CO's role in remedying contract performance problems.
- State the major contract remedies.

The CO's Role

In most cases, contractor performance problems can be informally resolved. At other times, the CO must invoke the formal remedies in the contract. Remedies available to the CO depend, in large part, on the specific clauses in the contract. For instance, many contracts do not have a liquidated damages clause.

EXAMPLES OF REMEDIES

- Assessment of liquidated damages (i.e., a dollar amount charged for each day deliveries are late or for other breaches, if and as specified in the contract).
- Rejection of work that does not conform to the contract's requirements. Generally when work is rejected, the contractor must either (1) correct the work at no additional cost to the Government or (2) offer other consideration.
- Exercise of the applicable warranty or guarantee expressly established in the contract or, in the absence of an express warranty, of an implied warranty (e.g., the warranties of merchantability or fitness at FAR 52.212-4(o)).
- Issuance of a "cure" notice or "show cause" notice. Both notices are preliminary to a termination for default if the contractor does not overcome the problem.
 - A cure notice is issued when the contractor has sufficient time left on the contract (i.e., 10 days or more prior to the contract's delivery date) to correct the problem and still meet the delivery schedule. The cure notice provides the contractor with an opportunity to convince the CO that the problem will be cured and that termination for default is therefore not necessary.
 - A show cause letter notifies the contractor that a default termination is impending and provides the contractor with an opportunity to "show cause" as to why such action should not be taken.
- Termination for cause or default, in which case the Government can obtain the deliverable from another contractor and bill the defaulted contractor for the excess costs of the reprocuring the deliverable (see section 9.2).

8.2.2 Property

FAR Part 45

- State the CO's role in property administration.
- State the general approaches that the CO uses to settle cases of Government property lost or damaged during contractor use.

The CO's Role in Furnishing Property

Some contracts provide for the furnishing of Government property to the contractor. Such contracts impose obligations on the Government, such as putting the property into the contractor's hands by the dates specified in the contract. The CO therefore has to track the performance of the Government as well as of the contractor in terms of compliance with property-related clauses.

When the Government furnishes property, the contractor is responsible for inventorying, maintaining, and protecting the property. The contractor must also ensure that the property is only used for purposes of the contract. In addition, the Government at times is entitled to property acquired by the contractor for work on the contract. That property also must be inventoried, maintained, protected, and properly utilized. Therefore, CO's typically rely on Government property specialists to:

- Confirm that the contractor has an adequate property management system.
- Monitor the contractor's management of the property.
- Oversee recovery or disposal of the property.

Loss or Damage

As a general rule, contractors are responsible and liable for Government property in their possession. What if the contractor loses or damages government property? The CO must first determine the value and extent of the damage and the contractor's liability for the damage, if any. The CO then works with the contractor to repair or replace the property or otherwise mitigate the damage, as provided in the property clause.

Disposal

When the contractor has finished working with the Government's property, the CO must recover the property or see to its disposal. At times, used Government property may be left with the contractor to:

- Save money.
- Expedite performance on other contracts with that firm.
- Ensure standardization of products delivered under other contracts.

8.2.3 Reporting Performance Problems & Documenting Past Performance

FAR 9.4 & 42.15

- Describe requirements for documenting past performance
- State the CO's role in reporting contractors to debarring officials.
- State what happens to an existing contract when the contractor is debarred.

Requirement to Document Past Performance

When work on the contract is completed, the Government must prepare an evaluation of contractor performance for contracts above:

- \$1,000,000 beginning July 1, 1995,
- \$500,000 beginning July 1, 1996, and
- \$100,000 beginning January 1, 1998

Exceptions:

- Contracts awarded under FAR Subparts 8.6 and 8.7.
- Construction and A&E contracts, which are covered by separate requirements at FAR §36.201 and 36.604.

Officials responsible for the evaluation typically solicit input from the technical office, contracting office, and (where appropriate) end users.

Definition of "Past Performance"

Past performance information is information that is relevant to future source selections on a contractor's actions under previously awarded contracts. This includes information on such matters as the contractor's:

- Record of conforming to contract requirements and to standards of good workmanship.
- Record of forecasting and controlling costs.
- Adherence to contract schedules, including the administrative aspects of performance.
- History of reasonable and cooperative behavior and commitment to customer satisfaction.
- Business-like concern in general for the interest of the customer.

Contractor Feedback

COs must provide copies of the agency evaluation to the contractor as soon as practicable after completing the evaluation. Give the contractor at least 30 days to comment on the evaluation. If the parties disagree about the evaluation, refer the evaluation to a level above the contracting officer. However, the contracting agency makes the final decision.

Access and Retention

Retain copies of the evaluation, contractor response, and review comments (if any). Mark this information with the legend "Source Selection Information." Only release the evaluation to other Government personnel and the contractor whose performance is being evaluated. Destroy the evaluation within three years after completion of contract performance.

Reporting Performance Problems

The CO is responsible for resolving performance problems using—where necessary—the remedies provided for in the contract. If such performance problems re-occur, or if the CO suspects that the contractor may be guilty of unethical business practices, report such problems or suspicions to the agency's debarring official.

The CO should report such performance problems as:

- Repeated late deliveries.
- Repeated rejections of work.
- Work of marginal quality.
- Violation of the Drug-Free Workplace Act.

The CO should also report any evidence of such unethical business practices as:

- Fronting for a debarred contractor.
- Collusion.
- Offering of gratuities.
- Kickbacks to suppliers.

The CO, or others who monitor the contractor, shall follow agency procedures in reporting any of the above situations to the agency "debarring official."

The Debarring Official's Options

The debarring official assesses the report, along with reports on that same firm(if any) from other COs. Through investigation, the debarring official determines whether the contractor should be:

- Debarred,
- Suspended, or
- Declared ineligible.

Contracts

Completion of Existing Suspensions are temporary, generally not exceeding 12 months unless legal proceedings have been initiated. Debarments vary, depending on the seriousness of the cause, but generally do not exceed three years. Ineligibility, however, runs until the cause for the ineligibility is corrected.

> A contractor who is listed as debarred, suspended, proposed for debarment, or ineligible may not receive new contracts. However, agencies may continue contracts (or subcontracts) in existence at the time. Contracts may not be renewed or extended unless the agency head or designee states in writing the compelling reasons to do so.

8.3 PAYMENT AND ACCOUNTING

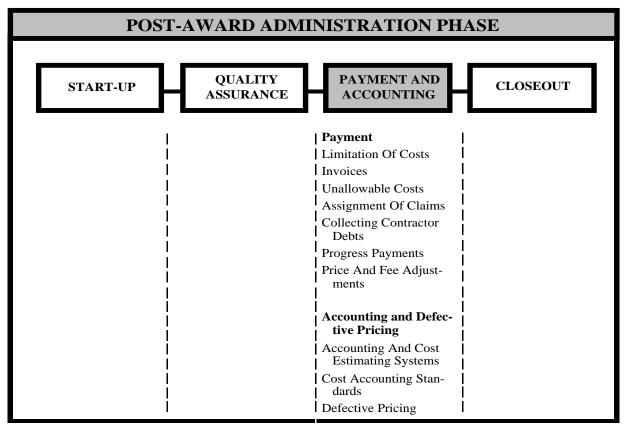


Exhibit 8-11. Payment and Accounting. (The Third Function of the Post-Award Administration Phase.)

8.3.1 Payment

8.3.1.1 Limitation of Costs

FAR 32.704

- Identify types of contracts that limit costs, and the contractor's responsibility for notifying the CO that it is approaching the limit of funds allotted.
- State several specific actions that a CO may take in response to an indication that a contractor is approaching the funding limit.

Contract Types That Limit Costs The Government uses cost-reimbursement, labor hour, or time and materials contracts when there are uncertainties about the work to be performed and, therefore, costs cannot be accurately estimated. Such contracts contain either a ceiling price or, in the case of cost type contracts, a total estimated cost (exclusive of fee). In performing the contract work, the contractor may only exceed the ceiling price or estimated cost at its own risk.

Notification Requirements

Under the terms of a cost reimbursement contract, the contractor is required to notify the CO when it is within 60 days of expending 75% of the total estimated cost of the contract. Time and materials and labor hour contracts similarly oblige the contractor to notify the CO when it is within 30 days of expending 85% of the ceiling price. In addition, the CO, or his or her representatives, independently monitor the contractor's cost performance against the total amount obligated for the work.

Options for Resolving Cost Overruns

If it appears that the contractor will be unable to complete the contract within the estimated cost or ceiling price, the CO, in cooperation with the requiring activity, must decide whether to:

- Reduce the scope of work to fit the remaining available funds.
- Let the contractor proceed under the current Statement of Work and funding, and when the funds are exhausted, obtain the fruits of the contractor's labors to that point.
- Negotiate a new estimated cost, obtain the additional funds, and modify the contract to permit continuation of the work until the work is complete or until the available funds are again exhausted (whichever comes first).

When a contract cannot be completed within the estimate and must receive additional funding, it is known as a "cost overrun."

8.3.1.2 Invoices

- State the CO's role in processing contractor invoices.
- Identify several types of withholdings and deductions that would reduce payments to contractors.

Processing Invoices

Contractors submit invoices for payment, based on:

- The contract price for work delivered and accepted,
- Costs incurred, or
- Progress made under the contract (e.g., percent of physical completion).

Invoices must be approved by the CO or a representative of the CO. The purpose of the approval process is to protect the interests of the Government by ensuring that payment (partial or total) is commensurate with the work performed.

Withholdings and Deductions

At times, the CO does not authorize payment in full of the invoiced amount. The following are among the many reasons for paying less than the amount invoiced:

- To reflect adjustments resulting from contract modifications.
- To take discounts for early payment.
- To resolve discrepancies between invoiced amounts and contract prices.
- To create a "set-off" fund for the collection of debts owed to the Government.
- To reflect invoiced items that have not been received or accepted.
- To avoid paying for unallowable costs.
- To retain a percentage of the fee, prior to the final invoice, as provided in cost reimbursable contracts.
- To liquidate progress payments.

Prompt Payment

The Government is also obliged to pay its bills promptly to avoid paying interest penalties to the contractor.

8.3.1.3 Unallowable Costs

- State the factors to consider in determining whether a contractor's costs are allowable.
- Describe the CO's appropriate response to an invoice containing unallowable costs.

Factors in Determining the Allowability of Invoiced Costs

Cost-reimbursement type contracts provide for payments to contractors, based on costs incurred in performance of the contract—and an appropriate percentage of the fee—during the billing period. Costs claimed include direct costs (e.g., for labor and materials), indirect costs (e.g., overhead costs), and G&A (General and Administrative costs).

To be reimbursable, the costs that the contractor claims must be allowable. Exhibit 8-12 presents the factors used in determining whether costs are allowable.

Procedure for Disallowing Costs

Ordinarily, auditors render opinions on the allowability of invoiced costs. Based on audit findings, the CO issues a "Notice of Intent to Disallow Costs." The contractor has 60 days to respond in writing with evidence that the disputed costs are in fact allowable. Based on the contractor's response, the CO may choose to:

- Allow all of the disputed costs, if the contractor's evidence sustains their allowability.
- Allow part of the disputed costs, if the contractor's evidence sustains their allowability in part.
- Allow none of the disputed costs.

This decision is provided to the finance office, with instructions for paying the allowable costs (if any) on the invoice.

ALLOWABLE CONTRACTOR COSTS FAR Part 31		
Factor The Question		
1 40001	The Question	Is the contractor billing the
Reasonableness	Is the cost reasonable, i.e., is it what would have been incurred by a prudent person in the conduct of competitive business?	Government for rent on unoccupied, unneeded space?
Allocability	Is the Government paying its fair share of indirect costs for work under the contract?	Is the Government being charged for 100% of the shop foreman's salary, when in fact the shop foreman also supervised work under five other contracts during the billing period?
Accounting principles	Is the cost properly charged to the Government under Cost Ac- counting Standards or generally accepted accounting principles?	Per the "consistency" principle, has the contractor consistently included the costs of tooling in its manufacturing overhead pool from one billing period to the next?
Terms of the contract	May the invoiced cost be paid under the contract's terms and conditions?	The Government might not have to reimburse the contractor for costs in excess of the total estimated cost in the schedule for a cost reimbursable contract (as discussed in Section 8.3.1.1).
Limitations in FAR Part 31	Is the Government prohibited by Part 31 from paying the cost as invoiced? Example	The Government is prohibited by FAR 31.205-51 from paying for the costs of alcoholic beverages. Exhibit 8-12. Reimbursable

Contractor Costs.

8.3.1.4 Assignment of Claims

FAR 32.8

• Describe the purpose and process for assigning claims.

• State some of the factors considered by COs in reviewing requests for assignment of claims.

Purpose and Description

Sometimes a contractor may need to borrow money to use in performing a contract. For example, the contractor might need money to purchase supplies, meet payroll, and pay other expenses, often well in advance of the receipt of payments from the Government.

The Assignment of Claims Act of 1940 permits a contractor to use its right to be paid by the Government for contract performance as security for a bank loan. Under an assignment, the lending institution makes a loan (or series of loans) to the contractor. The Government makes contract payments directly to the lending institution.

CO's Review and Determination

Before acknowledging an assignment, the CO must ensure, among other things, that the:

- Contract has been properly approved and executed.
- Contract permits assignment of claims.
- Assignment covers only money due or to become due under the contract.
- The assignment is to a bank, trust company, or other financing agency.
- The assignment has been properly executed.

Copies of the payment assignment are distributed to the:

- CO.
- Contractor.
- Lending institution.
- Disbursing Officer (of the office that will make payments under the contract).
- Surety on any bond applicable to the contract.

8.3.1.5 Collecting Contractor Debts

FAR 32.6

- State the different ways contractor debts can originate.
- Describe the principal methods used by the Government to collect contractor debts.

When Contractors Owe the Government

Usually it is the Government that owes money to the contractor. But it can be the reverse. A contractor may owe money to the Government for reasons such as:

- Assessment of liquidated damages.
- Damages or excess costs related to defaults (e.g., re-procurement costs).
- Overpayments resulting from discrepancies between the quantities billed vs. the quantities delivered.
- Government expenses for correcting latent defects in supplies furnished by the contractor.

When the CO or other responsible official learns of a debt, he or she collects the debt, including interest. Debt collection requires the cooperation of several Government officials including the CO, disbursing officials, and auditors.

Collecting Debts

Depending on the nature of the indebtedness and the financial condition of the contractor, the Government collects debts through:

- "Setoffs" against the contractor's next invoice or invoices. The Disbursing Officer will make such "setoffs" as checks are written.
- Cash payments from the contractor, either for the full amount or on a deferred payment schedule.
- Applying tax credits that are due to the contractor against the debt.

8.3.1.6 Progress Payments

• Describe the process for reviewing contractor requests for progress payments.

FAR 32.5

• Identify reasons for suspending or reducing progress payments or initiating alternate liquidation rates.

Monitoring Payments

Progress payments are a method of contract financing (see section 7.1.1.3). When progress payments are based on costs, contractor submit an invoice—a "Contractor's Request for Progress Payment" (SF 1443)—for costs incurred in the prior period (e.g, the prior month).

The progress payments clause at FAR 52.232-16 is not a blank check. For instance, the contractor may only invoice costs that are reasonable, allocable to the contract, and consistent with sound and generally accepted accounting principles. There are other restrictions on the types of costs and the total amount which may be invoiced.

The CO may request an audit of contractor's records with respect to progress payments. Among other reasons, audits may be necessary when the CO has concerns about:

- The contractor's accounting system and controls.
- The reliability or accuracy of the invoices.
- The possibility of default, when invoiced costs are out of line with the contract's price or the value of work performed to date.

Payment and Liquidation Rates

The rate of progress payments is established in the contract. Customarily, contractors are paid 80% of their cumulative total costs (85% for small businesses)—not to exceed 80% of the total contract price. When the contractor ships deliverables, prior progress payments are deducted (i.e., "liquidated") from payments for the delivered units (up to a maximum of 80% of the price of the delivered units).

Adjusting the Rates

There is a certain amount of risk in providing up-front money to a contractor prior to receiving the deliverables. For example, there is always the risk that a contractor will go bankrupt before completing the work. Hence, the CO may suspend or reduce progress payments (or raise the liquidation rate) if the CO believes that the contractor is:

- Being over-reimbursed.
- Failing to make progress.
- On the verge of bankruptcy.
- Delinquent in payment of its suppliers.

- Refusing access to its books.
- Otherwise putting the Government at unreasonable risk under the circumstances specified in the progress payments clause.

The contractor may also be at risk if the amount of progress payments is not sufficient to cover major start-up costs. In that case, the CO (with higher-level approval) may choose to grant an "unusual" progress payment rate (i.e., a rate higher than 80% of incurred costs) or reduce the liquidation rate.

8.3.1.7 Price and Fee Adjustment

• List various types of price and fee adjustments.

FAR 16.2 & 16.4

Contracts may contain a clause with a formula for adjusting the fee or price for the work performed.

TYPES OF PRICE AND FEE ADJUSTMENTS

- Economic price adjustments.
- Addition of an "award fee" to the base price or fee of a fixed-price or cost plus award fee contract.
- Establishment of the final price of a fixed-price incentive contract or final fee of a cost plus incentive fee contract.
- Prospective or retroactive redetermination of the negotiated price under a price redetermination contract.

Exhibit 8-13. Types of Price and Fee Adjustments.

To apply the formula for adjusting the fee or price, COs may consult auditors, technical personnel, or other agency personnel. For example, requirements managers often participate on panels that recommend the amount of the award fee. Other than in award fee contracts, contractors generally have the right to present their views on the application of the formula. Afterwards, COs modify the contract to reflect their final determination on the price or fee to be paid under the contract.

8.3.2 Accounting/Defective Pricing

8.3.2.1 Accounting and Cost Estimating Systems

- State when it is necessary to review and accept a contractor's accounting system.
- State when it is appropriate to review the acceptability of a contractor's cost estimating system.

Accounting Systems

FAR 52.215-2

The CO ensures that the contractor has an acceptable accounting system before awarding contracts for which the Government requires data on actual incurred costs. To confirm amounts claimed by the contractor as incurred costs, the contractor's accounting system must provide an accurate and complete "audit trail" for Government auditors and the CO.

Estimating Systems

FAR 15.811

In addition, the Government may periodically review a contractor's estimating system. This is especially appropriate when that contractor will be generating a significant number of proposals for large negotiated contracts. One critical concern is whether the contractor estimates costs on the same basis that it accounts for costs. If a contractor has an accurate estimating system, it enhances the reliability of individual proposals and it expedites the negotiation process.

Both types of reviews are normally accomplished by the cognizant audit and contract administration offices. The CO may request either type of review (or both).

8.3.2.2 Cost Accounting Standards

- Define the term CAS Disclosure Statements (CAS/DS).
- Describe situations which CAS/DS are required.

FAR Part 30

The Government has issued a series of Cost Accounting Standards (CAS). These standards are meant to achieve uniformity in cost accounting practices and procedures among Government contractors.

Exclusions

Cost Accounting Standards do not apply to all Government contracts. For example, CAS compliance is not required for the following types of contracts, among others (see FAR 30.201-1 for the full list):

FAR Appendix B

- Sealed Bid contracts.
- Negotiated contracts and subcontracts at \$500,000 or less.
- Contracts and subcontracts with small businesses.
- Contracts and subcontracts for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.
- Contracts and subcontracts for which prices are set by law or regulation.
- Firm-fixed price contracts and subcontracts awarded without submission of any cost data.

Full vs. Modified Coverage

In addition, some business entities may not be subject to "full" CAS coverage but only to "modified" coverage. Only a few of the Standards in Part 30 apply when the coverage is "modified." Full coverage may be required only if the entity has:

- Received a single national defense CAS-covered contract award of \$25 million or more, or
- Received \$25 million or more in net CAS-covered contract awards during its preceding cost accounting period, of which at least one exceeded \$1 million

FAR Appendix B

Disclosure Statements

When the contractor's accounting system is covered by CAS, the contractor submits disclosure statements as provided in the contract. A disclosure statement is a written description of the contractor's cost accounting practices and procedures. The Government checks the disclosure statement to ensure that:

- The statement adequately represents the contractor's actual accounting practices.
- The disclosed accounting practices conform to the CAS.

Cost Impact Adjustments

When contractors change accounting practices to conform with the CAS, or for other reasons, COs determine the impact of the accounting changes on any affected contracts and, where necessary, negotiate adjustments in their prices.

8.3.2.3 Defective Pricing

- State circumstances that are likely to suggest that contractor cost or pricing data may be invalid.
- State the action that the CO should take if defective pricing is discovered, either before or after award.

FAR 15.804-7

When required (as discussed in section 7.3.1.4), CO's obtain cost or pricing data from offerors or, with respect to contract modifications, from contractors. The contractor ordinarily certifies that the data are accurate, current, and complete as of the date of the final agreement on price.

Defective Cost or Pricing Data

Later, the Government may discover that the data were defective in some respect. Some potential tipoffs:

- For no apparent reason, data submitted as part of an ongoing negotiation differ significantly from data submitted in earlier negotiations.
- Invoiced costs are substantially lower than estimated.
- Market data are not consistent with submitted data.
- Audits of the firm's estimating or accounting system have raised general questions about the firm's data submissions.
- After submitting certified data from an intended subcontractor, the prime has either assigned the work to a different subcontractor or brought the work inhouse.

Audit and Analysis of the Data

Such indicators may prompt the CO to request an audit of the certified data. If the auditor finds that some or all of the data were inaccurate, incomplete, or not current, the CO must determine whether the defective data had (1) been relied on by the Government's representatives during negotiations and (2) had a significant effect on price or cost.

If the defective data had mislead the CO into overestimating the cost of performing the contract, the Government is entitled to a commensurate reduction in the contract price and interest on any overpayments.

8.4 CLOSEOUT

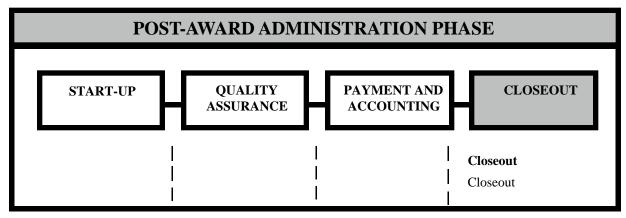


Exhibit 8-14. Closeout. (The Fourth Function of the Post-Award Administration Phase.)

8.4.1 Closeout

• State eight typical steps in contract closeout.

Purpose

FAR 4.804 & 4.805

A contract concludes when all deliverables have been accepted, the contractor has been paid, and the contract's other terms and conditions have been satisfied. A contract must be closed out administratively to ensure that in fact all contractual obligations have been met by both parties, and that government interests are protected.

The CO often relies on other personnel to help determine that the contract is ready for closeout. For example:

- A **Property Administrator** may be responsible for certifying that all Government-furnished property has been either returned or accounted for.
- The **Requiring Activity** may be responsible for confirming that any final reports required have been received.
- The **Office of Counsel** may be responsible for confirming that any required patent statements have been filed, etc.

Exhibit 8-15 lists eight general steps in closing out a contract.

EIGHT STEPS OF CONTRACT CLOSEOUT

FAR 4.8

- 1. Verify that the contract is physically complete (e.g., that all required supplies have been delivered, inspected, and accepted).
- 2. Obtain forms, reports, and clearances, such as:
 - The contractor's final invoice.
 - The contractor's closing statement and/or release of claims.
 - Plant clearance report.
- 3. Verify that the Government and the contractor have satisfied other terms and conditions for closeout, such as:
 - Return or other disposition of Government property.
 - Disposition of classified material.
- 4. Settle any outstanding issues, such as:
 - Disallowed costs.
 - The final price or fee of an incentive contract.
 - The award amount of an award fee contract.
- 5. Verify that there are no outstanding claims or disputes.
- 6. Make final payment and deobligate remaining funds, if any.
- 7. Prepare a contract completion statement and, based on the retention schedules in FAR 4.805, provide for the disposal of files.
- 8. Determine whether to invoke phase-in/phase-out rights under the "Continuity of Services" clause (FAR 52.237-3).

Exhibit 8-15. Eight Steps of Contract Closeout.